

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA, §
§
v. § CRIMINAL NO. 4:20-CR-269-Y
§
ERIC PRESCOTT KAY (01) §

**UNOPPOSED MOTION TO CONTINUE TRIAL AND EXTEND
PRETRIAL DEADLINES**

TO THE HONORABLE TERRY R. MEANS
SENIOR UNITED STATES DISTRICT JUDGE FOR THE
NORTHERN DISTRICT OF TEXAS

COMES NOW, **ERIC PRESCOTT KAY (1)**, Defendant, by and through his attorney of record, WM. REAGAN WYNN, and moves this Court to continue the current trial date until at least August 2, 2021, with a commensurate extension of all pretrial deadlines. In support thereof, Defendant would show the Court the following:

- (1) The indictment in this case was returned October 15, 2020. Pursuant to this Court's Order Granting Joint Motion to Continue entered November 13, 2020, (ECF No. 18), trial in this matter is scheduled to begin April 19, 2021.
- (2) The Government has produced voluminous discovery to undersigned counsel as follows:

- (A) On February 3, 2021, undersigned counsel procured an external computer hard drive containing approximately 185 GB of email archive files;
- (B) On the afternoon of Friday, February 12, 2021, a representative of the Government informed undersigned counsel via email a second external computer hard drive was available to be picked up. Undersigned counsel was unable to arrange to retrieve the hard drive on February 12, 2021, and planned to retrieve it on February 15, 2021. Due to severe winter weather, the United States Attorney's Office in Dallas was closed the week of February 15, 2021, and undersigned counsel was unable to retrieve the drive until Monday, February 22, 2021. The second drive contains approximately 7,800 separate digital files totaling over 24,000 pages of law enforcement reports, expert reports, financial records, telephone records, and other records obtained via grand jury subpoena;
- (C) On March 25, 2021, a representative of the Government informed undersigned counsel via email approximately

100 pages of additional discovery have been made available via an online download.

- (3) Undersigned counsel for Mr. Kay, Wm. Reagan Wynn, was retained to represent Mr. Kay as local co-counsel to Michael Molfetta, California Bar #151992, 1503 S. Coast Drive, Suite 202, Costa Mesa, CA 92626. Mr. Molfetta represented Mr. Kay during the investigation resulting in the indictment in this matter and has continued to advise Mr. Kay although he has not formally entered his appearance as counsel of record in this matter as of this date. Undersigned counsel anticipates Mr. Molfetta will shortly seek admission to this Court *pro hac vice* for purposes of acting as Mr. Kay's lead counsel in trial of this matter.
- (4) Undersigned counsel and Mr. Molfetta have begun the laborious process of reviewing the voluminous discovery provided by the Government. While the discovery as produced by the Government is organized in such a way that specific categories of discovery can be located with comparative ease, it is still necessary to for undersigned counsel and Mr. Molfetta to review, in detail, all of the materials produced. As of the date of the filing of this Motion,

undersigned counsel and Mr. Molfetta anticipate it will be necessary to expend a significant amount of additional professional time and effort to fully reviewing and analyzing the discovery materials.

- (5) Undersigned counsel is in the process of interviewing possible expert witnesses in the field of forensic toxicology to review materials obtained by undersigned counsel from the Government on February 22, 2021. Based on his progress To date, undersigned counsel anticipates it will require at least an additional 30 days, until the last week of April 2021, to retain forensic toxicologists to act as consultants and/or potential expert witnesses for the defense in this matter.
- (6) In sum, undersigned counsel and Mr. Molfetta believe they will require an additional approximately 90 days to adequately review discovery, conduct an independent investigation, and otherwise prepare for trial in this matter.
- (7) Defendant respectfully submits the ends of justice served by granting the requested continuance outweigh the best interest of the public and the defendant in a speedy trial. See 18 U.S.C. § 3161(h)(7)(A). Denial of the requested continuance will almost assuredly result in a miscarriage of justice because

undersigned counsel and Mr. Molfetta are unable to fully review and analyze the discovery produced by the Government and also conduct necessary independent investigation into matters raised in the discovery under the current schedule. See 18 U.S.C. § 3161(h)(7)(B)(i). As such, undersigned counsel and Mr. Molfetta require additional time of effective preparation of this matter for trial taking into account the exercise of due diligence. See 18 U.S.C. § 3161(h)(7)(B)(iv).

- (8) This request is not made for purposes of delay, rather, it is made in the interests of justice.
- (9) The parties of have identified the following potential conflicts for trial over the period from the date of the filing of this motion through 90 days after the current trial date of April 19, 2021:

- (A) In addition to his criminal defense practice, Michael Molfetta devotes a portion of his professional time and effort to serving as an agent for professional baseball players. As part of his professional baseball agency, Mr. Molfetta annually spends the majority of the month of July on the east coast of the United States scouting

and recruiting players playing in various Collegiate Summer Leagues. The annual July scouting and recruiting activities are the only time in the year Mr. Molfetta recruits potential clients for his agency and missing the opportunity to scout and recruit players will irreparably damage his agency. Accordingly, Mr. Molfetta has previously planned to spend the month of July 2021 scouting and recruiting as per his normal professional routine; and,

(B) Counsel for the Government are unavailable the weeks of August 30, 2021, and September 6, 2021.

WHEREFORE, PREMISES CONSIDERED, Defendant Eric Prescott Kay (01) respectfully prays the current trial date of April 19, 2021, be continued until at least August 2, 2021, or for another date as the Court might otherwise direct, and the associated pretrial deadlines be extended for a corresponding period of time.

Respectfully Submitted,

/s/ Wm. Reagan Wynn

Wm. Reagan Wynn

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CERTIFICATE OF CONFERENCE

I hereby certify that on March 26, 2021, I conference was held with Assistant United States Attorneys Lindsey Beran and Errin Martin and the Government's position on this Motion is as follows:

While the United States is not opposed to a continuance of the trial date in this matter, the Government is not agreeing to or joining in any statements by the defendant regarding his bases for the motion to continue. Assuming the Court is inclined to grant defendant's motion to continue, the United States would propose a continuance of the trial setting to July 12, 2021. In the alternative, to the extent defense counsel is unavailable the month of July, the Government requests a trial setting of August 2, 2021. In addition, the Government is unavailable the weeks of August 30 and September 6.

/s/ Wm. Reagan Wynn
WM. REAGAN WYNN

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2021, I electronically filed the foregoing document using the Court's CM/ECF system, thereby effecting service on attorneys of record.

/s/ Wm. Reagan Wynn
WM. REAGAN WYNN